

President Tusk's Proposal for a New Settlement for the UK in the EU: Fueling – not Taming – EU Disintegration

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Federico Fabbrini Mi 3 Feb 2016

The European Union is at the crossroad. On 17 February the European Council will deal with the United Kingdom's request to renegotiate the terms of its EU membership. The British Conservative government has committed to holding a referendum on withdrawal from the EU before the end of 2017. At the same time, the British Prime Minister has opened negotiations with its European partners, asking for a "new deal" between the UK and the EU. In particular, Mr. David Cameron advanced four requests: the UK should be legally exempted from participating to the project of "an ever closer union"; national parliaments should be entitled to veto EU legislation; the relation between the Eurozone and the non-Eurozone countries should be put on an equal footing; and, crucially, the UK should be entitled to limit access to social benefits for citizens of other EU countries who move to Britain. Mr. Cameron has promised that unless the European Council delivers what Britain has asked for, he will campaign for UK secession from the EU.

The negotiations between the UK and the other member states have advanced slowly over the last months. The threat of a "Brexit" (Britain leaving the EU) is an additional headache for a Union already strained by the Euro-crisis and, more recently, by the migration crisis. So the temptation to accommodate Mr. Cameron's request may be strong. In fact, in a letter dispatched to the members of the European Council on 2nd February, the President of the European Council has proposed just that. In the draft text of a Decision of the Heads of State and Government concerning "a new settlement with the United Kingdom", Mr. Donald Tusk recommended to its peers to accept most of Mr. Cameron's requests. According to the draft text prepared by the President of the European Council, among others, the UK would be shielded from Eurozone financial regulations, a super majority of national parliaments would be empowered to veto EU bills considered in violation of subsidiarity; and member states in the Council would commit to pass EU legislation allowing the UK to curb social welfare payments for EU citizens resident in the UK when the inflow of workers from other member states reaches an exceptional magnitude over an extended period of time.

However, despite Mr. Tusk's accommodative position, the European Council should firmly reject Mr. Cameron's demands to obtain a special status within the EU. The reason for doing so has to do with the very nature of the EU. The Union should be seen as a package deal. Membership in the Union carries a number of benefits, but it also has costs. Each member state has aspects of Union membership it may dislike, but it ultimately remains in the Union because, overall, the advantages of being part of it outweigh the costs. The UK may disapprove of free movement of persons, and the resultant right to social benefit, but, for example, other states may find EU fiscal rules as too tight, or they may dislike liberalization of services, or subsidies to agriculture. Yet, all states accept aspects of the Union they dislike because membership in the EU allows them, in return, to reap the benefits of the common market, or to gain in terms of security and defense from foreign threats. In other words, membership in the EU is a package deal, and for every state the costs of being part of the Union are prices to be paid as a way to obtain other, important, returns.

Seen from this perspective, the request of the UK to obtain exceptions from EU rules, notably in the area of free movement of persons, reveals all its problems. If a member country is able to pick and choose what

aspects of membership it likes or not, it can essentially maximize the benefits of being part of a Union, without having to pay for the costs. But this logic essentially undermines the idea of the Union as a package deal, and plants the seed for the inevitable disintegration of the EU. If the UK can obtain derogation from EU rules on free movement of persons, why shouldn't any other member state also ask for exemptions from those rules it doesn't like? In fact, the cherry-picking EU rules is already spinning out of control: Eastern EU member states are flatly refusing to implement the EU's refugee relocation program, a policy legally adopted last year. And in February, Germany's Constitutional Court will decide whether to unilaterally strike down a program of the European Central Bank allowing for the purchase of state bonds – a move which could destabilize the common currency. Faced with the proliferation of such threats and defections from common rules and policies, the European Council should firmly reject the UK request to obtain a special accommodation, and reaffirm the idea that the Union is a package deal, with benefits and costs alike.

However, this doesn't mean the European Council should do nothing on the British demands. While the UK is wrong in asking for individualized derogations and exceptions, it is right in claiming that the EU must be reformed. In fact, the Euro-crisis and the migration crisis have dramatically exposed all the limits of a system of governance based on the constant negotiation between conflicting national interests. And the weaknesses of the EU decision-making system have taken their toll, as revealed by the rise of protest movements and extremist parties in all member states. After all, Mr. Cameron himself acknowledged that the Eurozone has to make inroads towards a fiscal union, to stabilize the common currency. And managing the challenge of migration equally requires institutional and substantive reforms. So at its next meeting the European Council should take seriously the British invitation, and call for the establishment of a convention charged to revise the founding treaties of the EU. Rather than granting to the UK opt-outs from the package deal, the European Council should accept that the package deal is broken, and vow to reform it for all states.

The prospect of opening an EU constitutional reform process may raise eyebrows in Paris and Berlin, which are facing elections in 2017. But the future of Europe cannot be dependent on the German and French electoral cycle. And ultimately improving the functioning of the EU is in the interest of France and Germany too: As the former has realized throughout the Euro-crisis, the current architecture of European economic governance puts too much emphasis on fiscal consolidation, and not enough in promoting growth, and fighting unemployment; and as the latter has experienced with the migration crisis, it may find itself in the position to unsuccessfully plead for solidarity and burden-sharing from other states. In February 2016, the European Council has the historical occasion to transform a potentially vicious event such as Brexit into a virtuous opportunity to improve the EU. Updating the rules of the package deal so that it remains attractive for all member states will imply rebalancing the EU competences and reforming the EU institutions – particularly by strengthening its executive power. Rather than fueling disintegration, the heads of state and government of the EU should not waste the chance to create a “more perfect Union” for Europe.

Federico Fabbrini's last book [Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges](#) has just been published in the UK by Oxford University Press.

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